IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 986 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
THAKOR BHARATJI DIWANJI CHUNAJAS KUMBHAJI & ORS

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Appearance :
MR DIPEN A DESAI APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/11/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, against the judgment and order dated 14th of February, 2006, delivered by Additional Sessions Judge and Presiding Officer, Fast Track Court No.3, in Sessions Case No. 04 of 2006, whereby all the present respondents, being accused of the Sessions Case, came to be acquitted by the Trial Court, for the offences punishable under Sections 307, 323, 504 and 114 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act.

2 At this stage, learned APP Mr. Dipen A Desai was heard at length.

3 According to prosecution case, the incident occurred on 22nd of August, 2005, near village Denap, Taluka – Visnagar. At about 12.00 p.m. complainant Chaturji Parkhaji Thakor along with his brother Babuji were going towards their house, when both of them were accosted by accused Bharatji Diwanji Thakor about the amount of Rs. 50/- borrowed by the complainant three/four days earlier to the incident. Complainant assured that the amount would be paid till that evening. Accused No.1 got excited and gave abuses to the complainant, and on right side of abdomen, inflicted a knife blow. Jagaji Parkhaji Thakor and Babuji, who are brothers of the complainant, attempted to save complainant, but at

that time, all the other three accused came there and accused No.3 Diwanji Bhikhaji had an iron instrument for agricultural use with him while other accused had sticks with them. Jagaji Parkhaji Thakor in this scuffle had also received injuries on his right shoulder and other parts of the body. A crowd was gathered and, therefore, all the four accused ran away from the spot. Babuji, brother of the complainant, brought complainant and Jagaji to Visnagar Civil Hospital. Medical Officer of the Civil Hospital informed Visnagar Police Station by telephone and, therefore, PSI Baranda, visited Visnagar Civil Hospital and recorded complaint of Chaturji, which was registered afterwards as Crime Register No. I/250 of 2005, in Visnagar Police Station and the investigation was handed over to Mr. Baranda. Charge sheet came to be filed in the Court of Judicial Magistrate, First Class, at Visnagar, against all the four respondents, and the said case for the above said charges, was committed to the Court of Sessions and was made over to Additional Sessions Judge and Fast Track Court No.3, which was registered as Sessions Case No. 4 of 2006. Vide Exhibit – 4 a charge for the above said offences was framed against all the four respondents by the Trial Court, to which, each of the respondents pleaded not guilty and, therefore, the prosecution examined in all five witnesses and produced on record necessary documentary evidence. Evidence being over, statements of each of the respondents under Section 313 of the Code of

Criminal Procedure was recorded by the Trial Court, wherein their defence was of total denial and, therefore, the learned APP and defence Lawyer were heard in detail by the Trial Court and thereafter vide judgment and order impugned in this Appeal, the respondents came to be acquitted for the charges levelled against them. Hence, this Appeal.

4 We have gone through the record and proceedings carefully, even at this stage, as the record and proceedings of the Trial Court is available with us. We have scrutinized the reasons assigned by the Trial Court for acquitting the respondents and we have re-appreciated the evidence recorded during the trial. We have taken into consideration the contention raised on behalf of the State to Admit the Appeal for consideration.

5 Going through the evidence recorded, it clearly appears that Dr. Mansing Lalaji Choudhari, examined as PW-1 at Exhibit – 10, deposed that he had treated complainant and injured Jagaji. Complainant had one piercing wound in the cavity of the chest while Jagaji had injuries of abrasion. He had produced on record medical certificates, vide Exhibits 11 and 12.

6 Both the material witnesses i.e. PW-2 Chaturji Parkhaji

Thakor, Complainant and injured, examined at Exhibit-14 and eye witness PW-3 injured Jagaji Parkhaji Thakor, examined at Exhibit-15, did not support the prosecution case as to the incident. PW-2 – injured Chaturji stated that, at the time of the incident, altercations, on account of the amount of Rs. 50/- which he had borrowed from accused No.1 , had taken place and thereafter crowd was gathered at the spot and during scuffle, somebody had inflicted him injuries, but he could not say who inflicted the injury and by which weapon. He was declared hostile by the prosecution. Likewise, PW-3 Jagaji Parkhaji Thakor, also stated that complainant Chaturji Parkhaji Thakor, had been to his elder brother, and on the day of the incident, while he was at his residence, he heard shouts of Chaturji Parkhaji Thakor near the temple of Chamunda Goddess. Jagaji Parkhaji Thakor further stated that when he reached near Chaturji, he found that Chaturji Parkhaji Thakor had received injuries on the side of the abdomen and, therefore, he took Chaturji to the Visnagar Civil Hospital. He did not say anything further involving the accused in the incident. The witness was declared hostile by the prosecution, nothing could be elicited by the prosecution from the cross-examination of these two witnesses as to support the prosecution case. PW-4 Lilabhai Ramabhai Rabari, examined at Exhibit–23, is a panch witness, and he has also not supported the panchnama Exhibit – 24 of the discovery of weapons at the instance of

the accused. Thereafter, PW-5, Investigating Officer Rohitbhai D. Baranda, has been examined at Exhibit – 25. According to him, he recorded the complaint and he was entrusted with the investigation. He recorded the statements of the witnesses, draw panchnama and submitted charge sheet.

7 This is all the evidence of the prosecution.

8 While we re-appreciated the evidence recorded during the trial, there is no doubt about the fact that none of the witnesses, even injured, could support the prosecution case and, therefore, the learned Trial Judge rightly acquitted the accused for the charges levelled against them. On re-appreciation of the evidence, we are unable to take a different view than taken by the Trial Court of acquitting the accused. This being the Appeal against the order of acquittal, unless it is found that the reasons assigned by the Trial Court and conclusions arrived are so perverse as unsustainable in all respects, no interference is permitted in the orders of acquittal. We do not find that the reasoning of the Trial Judge for arriving at the conclusion of the acquittal is perverse and requires interference even at this stage. Therefore, there is no prima facie case in favour of the appellant to Admit the Appeal for consideration.

9 In above view of the matter, Leave to Appeal refused and Appeal stands dismissed.

(J. R. VORA, J.)

(M. R. SHAH, J.)

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